

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM LYLE NIBLE,  
Plaintiff,  
v.  
JEFF MACOMBER ET AL.,  
Defendants.

Case No. 2:24-CV-01259-DJC-CSK-PS

ORDER & FINDINGS AND  
RECOMMENDATIONS TO DENY MOTION  
FOR EMERGENCY PRELIMINARY  
INJUNCTION AND TEMPORARY  
RESTRAINING ORDER

(ECF No 17)

Plaintiff William Lyle Nible brings a pro se First Amended Complaint ("FAC") alleging violations of his federal constitutional rights under 42 U.S.C. § 1983 by Jeffrey Macomber, the Secretary for the California Department of Corrections and Rehabilitation ("CDCR"); Tommee Dorsey, a Parole Agent with CDCR; Jessika Richardson, a Supervising Officer with the Interstate Commission for Adult Offender Supervision ("ICAOS"); Allison Woodruff; Jason Johnson, the Director of ICAOS; Stephenie Reyes; Mr. St. Louis, a Supervisor at Placer County Division of Adult Parole Operations ("DAPO"); Broomfield, the Warden at San Quentin Prison; Mr. Lugar, a Supervisor at Placer County DAPO; H. Moseley; and Julie Raskin-Lee (together, "Defendants"). See

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1 FAC (ECF No. 11).<sup>1</sup> Plaintiff files a renewed emergency preliminary injunction and  
2 temporary restraining order (“TRO”) against Defendants, asking that the Court enjoin  
3 Defendants from enforcing several allegedly unconstitutional conditions of parole. Pl.  
4 Emergency Mot. No. 2 (ECF No. 17).

5 For the reasons set forth below, the Court recommends DENYING Plaintiff’s  
6 Motion for Emergency Preliminary Injunctive Relief and Temporary Restraining Order,  
7 and providing Plaintiff with the opportunity to re-file the motion and request a hearing  
8 after Plaintiff provides notice to all Defendants and after briefing by both sides.

9 **I. BACKGROUND**

10 **A. Factual Background**

11 After serving twenty-five years in prison, Plaintiff was found suitable for release on  
12 parole on February 15, 2023, and was subsequently released on June 27, 2023. Pl.  
13 Emergency Mot. No. 2 (ECF No. 17-2 at 2); William Lyle Nible Decl. ¶ 7 (ECF No. 17-3  
14 at 2). After learning of his impending release, Plaintiff requested an interstate transfer to  
15 Missouri in accordance with ICAOS, which was refused. Nible Decl. ¶ 5. After his  
16 release, plaintiff was placed in Los Angeles County, and his requests to transfer to  
17 Sacramento County and Missouri were also refused. *Id.* ¶¶ 8, 9; FAC at 11-12. Plaintiff  
18 complains that he was unconstitutionally required to wear a GPS ankle monitoring  
19 device, attend sex offender treatment program classes, and that he had allegedly  
20 unconstitutional conditions of parole placed on him. FAC at 11,14; see Pl. Emergency  
21 Mot. No. 2 (ECF No. 17-2 at 3). Plaintiff further alleges various violations of his  
22 constitutional rights as a result of the parole conditions Defendants imposed, including  
23 “Constitutionally protected rights, Due Process and Equal Protection, [and] Double  
24 Jeopardy.” FAC at 10. Plaintiff seeks damages and injunctive relief, including the instant  
25 request for preliminary injunctive relief. See *id.* at 18.

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28 <sup>1</sup> This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c)(21).

## **B. Procedural Background**

Plaintiff initiated this action by filing his initial complaint concurrently with his first Motion for Emergency Preliminary Injunction and TRO. (ECF No. 2.) That motion was denied for failing to comply with Local Rule 231 and Federal Rule of Civil Procedure 65 where Plaintiff failed to provide notice to the affected parties. See 5/10/2024 Order Denying Mot. for Emergency Prelim. Inj. at 3-4 (ECF No. 6). Plaintiff filed his FAC on July 1, 2024. See FAC. Plaintiff then requested leave to file a supplemental complaint to add a new defendant. (ECF No. 13.) The Court denied this motion without prejudice for failing to comply with Local Rule 220 where Plaintiff did not submit a new proposed pleading and did not restate the allegations against the other current defendants. 8/21/2024 Order at 2 (ECF No. 15). Plaintiff also filed a motion for an extension of time to serve the summons and complaint on Defendants (ECF No. 14), which the Court granted, extending the service deadline until October 20, 2024.<sup>2</sup> 8/21/2024 Order at 4. Defendant Moseley filed an answer to Plaintiff's FAC on September 17, 2024. (ECF No. 16.)

On October 2, 2024, Plaintiff filed his second Motion for Emergency Preliminary Injunctive Relief and a TRO. See Pl. Emergency Mot. No. 2.

## **II. DISCUSSION**

### **A. Plaintiff's Second TRO Motion is Procedurally Deficient**

Plaintiff moves for a temporary restraining order and an emergency preliminary injunction pursuant to Federal Rules of Civil Procedure 65 against all Defendants.

Federal Rule of Civil Procedure 65(b)(1) permits the court to issue a TRO without notice to the adverse party only if (1) specific facts in the affidavit or underlying pleading show that immediate and irreparable injury, loss, or damage will result before the opposing party may be heard; and (2) the movant certifies in writing efforts made to give notice and the reasons why notice should not be required. Fed. R. Civ. P. 65(b)(1). This

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<sup>2</sup> From a review of the docket, it does not appear that Plaintiff has served any other Defendant besides Moseley.

1 Court's Local Rules also set forth certain procedural mandates for a temporary  
2 restraining order to issue, including that the movant provide the following documents:  
3 (1) a complaint; (2) a motion for temporary restraining order; (3) a brief on the relevant  
4 legal issues; (4) an affidavit to support the existence of irreparable harm; (5) an affidavit  
5 detailing the notice or efforts undertaken or showing good cause why notice should not  
6 be given; (6) a proposed temporary restraining order and provision for bond; (7) a  
7 proposed order with blank for fixing time and date for a hearing; and (8) where a  
8 temporary restraining order is requested ex parte, the proposed order should also notify  
9 the affected parties of the right to apply to the Court for modification or dissolution on two  
10 (2) days' notice or such shorter notice as the Court may allow. E.D. Cal. Local Rule  
11 231(c).

12 Like his first TRO motion, Plaintiff's second TRO motion is procedurally deficient  
13 because Plaintiff has not complied with the requirement to provide notice to all affected  
14 parties. See Fed. R. Civ. P. 65(b)(1)(B); E.D. Cal. Local Rule 231(a) & 231(c)(5). This is  
15 concerning because in the May 10, 2024 Order denying Plaintiff's first TRO request, the  
16 Court expressly found that Plaintiff failed to provide proper notice of Plaintiff's emergency  
17 request to affected parties. See 5/10/2024 Order at 3-4. Like his first TRO motion,  
18 Plaintiff has not provided any details regarding whether he has provided actual notice,  
19 whether he tried to use reasonable efforts, or whether he should not be required to  
20 provide notice. There is no reference in Plaintiff's motion, Plaintiff's declaration, or the  
21 docket regarding any such efforts. See Pl. Emergency Mot. No. 2 (ECF No. 17); Nible  
22 Decl. (ECF No. 17-3 at 2); Docket. Plaintiff's motion includes an attachment titled "Notice  
23 of Motion for Injunction," which states, in relevant part: "PLEASE TAKE NOTICE that [on  
24 a date and time to be determined], or as soon thereafter as counsel may be heard,  
25 [plaintiff], will move this Court for an order mandating that the Department of Corrections,  
26 parole division cease and desist from enforcing unconstitutional directives upon the  
27 plaintiff." Pl. Notice (ECF No. 17-1). However, this document is not addressed to anyone  
28 and there is no indication that Plaintiff provided this notice to any Defendant. See *id.*; Pl.

1 Emergency Mot. No. 2; Docket.

2 It appears that only one defendant has been served with the summons and the  
3 FAC so far as only one defendant has made an appearance in this action and  
4 responded to the FAC. See Docket. Defendant Moseley,<sup>3</sup> who is represented by  
5 counsel, has filed an answer to the FAC. Moseley Answer. As a result, Defendant  
6 Moseley has received actual notice of Plaintiff's second TRO through the ECF filing  
7 system. Though it appears that Plaintiff failed to properly notify Defendant Moseley of  
8 this second TRO, Defendant Moseley has received actual notice of the second TRO.

9 Plaintiff failed to comply with Rule 65(b)(1)(B) and Local Rule 231(c)(5) because  
10 he did not make efforts to provide notice of his motion to the remaining Defendants  
11 Macomber, Dorsey, Richardson, Woodruff, Johnson, Reyes, St. Louis, Broomfield,  
12 Lugar, and Raskin-Lee, and did not provide reasons why notice on these defendants  
13 should not be required. See Pl. Emergency Mot. No. 2; Nible Decl. Courts regularly deny  
14 TROs for failing to comply with the stringent requirements of Rule 65(b)(1), including  
15 those sought by pro se plaintiffs. See *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d  
16 1126, 1131 (9th Cir. 2006) ("courts have recognized very few circumstances justifying  
17 the issuance of an ex parte TRO"); *Abdel-Malak v. Doe*, 2020 WL 5775818, at \*1 (C.D.  
18 Cal. Feb. 20, 2020) (denying TRO sought by pro se plaintiff for failure to satisfy Rule  
19 65(b)'s "strict requirements"); *Seymour v. U.S. Dep't of Def.*, 2010 WL 3385994, at \*1  
20 (S.D. Cal. Aug. 26, 2010) (same); *Roman v. Nw. Tr. Servs., Inc.*, 2010 WL 3489962, at  
21 \*1 (W.D. Wash. Aug. 31, 2010) (same). In addition, Plaintiff's failure to comply with the  
22 Local Rules' requirements for TROs is sufficient justification to deny the motion.<sup>4</sup> See  
23 *Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1131 (9th Cir. 2012) ("Denial  
24 of a motion as the result of a failure to comply with local rules is well within a district  
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26 <sup>3</sup> The Docket spells Defendant's name "Mosley," but defendant's answer spells the  
27 name "Moseley." The Court uses the correct spelling of "Moseley."

28 <sup>4</sup> In addition, Plaintiff did not submit the proposed orders required by Local Rule  
231(c)(6)-(8) or the TRO Checklist.

1 court's discretion.").

2 The Court therefore recommends denial of this second TRO motion based on  
3 these procedural deficiencies.

4 **B. Plaintiff's Request for Judicial Notice**

5 Included with Plaintiff's TRO is his request that the Court take judicial notice of  
6 "the fact that the Department of Corrections, Parole Division, is making false and  
7 misleading statements intentionally concerning Plaintiff's convictions." (ECF No. 17-5 at  
8 2.) A court may take judicial notice of "a fact that is not subject to reasonable dispute"  
9 because it "is generally known within the trial court's territorial jurisdiction" or "can be  
10 accurately and readily determined from sources whose accuracy cannot be reasonably  
11 questioned." Fed. R. Evid. 201(b). Here, the asserted fact is neither generally known nor  
12 can it be accurately or readily determined. See *Peralta v. Swetalla*, 2022 WL 783014, at  
13 \*3 (E.D. Cal. Mar. 11, 2022). Therefore, Plaintiff's Request for Judicial Notice is denied.

14 **III. CONCLUSION**

15 It is **ORDERED** that Plaintiff's request for judicial notice (ECF No. 17-5) is  
16 DENIED.

17 It is **FURTHER RECOMMENDED** that Plaintiff's Motion for Temporary  
18 Restraining Order and Preliminary Injunction (ECF No. 17) be DENIED.


19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
21 14 days after being served with these findings and recommendations, any party may file  
22 written objections with the Court and serve a copy on all parties. This document should  
23 be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any  
24 reply to the objections shall be served on all parties and filed with the Court within 14  
25 days after service of the objections. Failure to file objections within the specified time  
26 may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449,

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455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: October 15, 2024

  
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CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

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